(1996) 10 MP CK 0023

In the Madhya Pradesh High Court

Case No : M.P. No. 1610 of 1986

Anil Kumar Ojha APPELLANT

Vs

Appellate Authority, District Co-Operative Land Development Bank Ltd. and Others RESPONDENT

Date of Decision : 03-10-1996

Acts Referred:

Citation : (1997) 1 MPLJ 597

Hon'ble Judges : Tejinder Singh Doabia, J

Bench : Single Bench

Advocate : N.S. Purohit, for the Appellant; A.K. Shrivastava, for the Respondent

Judgement

T.S. Doabia, J.

Shri N. S. Purohit, Advocate for the petitioner.

Shri A. K. Shrivastava, Advocate for the respondents 2 and 3.

Heard.

This petition under Articles 226 and 227 of the Constitution of India is preferred against an order passed by the Chief Executive Officer of Mandsaur District Co-operative Land Development Bank Ltd., Mandsaur. This order was subject-matter of adjudication before the authorities constituted under the M. P. Co-operative Societies Act, 1960 (hereinafter referred to as the Act). The final order under the aforementioned Act was passed. This order was challenged in this Court by filing a writ petition i.e. in M. P. No. 9/80. An argument was raised that this order is not amenable to writ jurisdiction. This argument was repelled. This Court concluded that the appellate order passed would be amenable to writ jurisdiction. This order was held to be bad as it was not a speaking order. The matter was remanded to the appellate authority. The appellate authority has passed an order on 25th of August, 1986. Copy of this Order is Annexure P/12. It is this order which is being challenged in this writ petition.

The learned counsel appearing for the petitioner has argued that the petitioner was dismissed by an authority who was not competent to do so. According to him, if this be the position then the order of dismissal would be void ab initio. Such an argument was raised before the appellate authority which passed the order Annexure P/12. Before noticing as to how the matter was dealt with by the appellate authority, some facts necessary for appreciating this argument be noticed.

The petitioner was appointed as a Clerk vide order Annexure P/1. This order is dated 10th of November, 1976. This was passed by the President of the respondent No. 3-Bank. Later on, vide order Annexure P/2, the petitioner was appointed as a Supervisor. This order is Annexure P/2. This was passed on 30th of December, 1976 by the President of the respondent No. 3-Bank. It is on the basis of the above, it is contended that as the petitioner was appointed by the Board of the respondent No. 3 Bank, therefore, only the Board or the Staff Committee of the Board could pass an order of dismissal.

This argument was sought to be countered by contending that at the time when the order was passed, the Board stood superseded. The powers which were being exercised by the Board of Respondent No. 3-Bank came to be conferred on the Chief Executive Officer of the Bank. It is accordingly, argued that Shri Sahu who passed the order of dismissal was well within his rights to do so. In this regard reference was being made to order Annexure P/7 by both the sides.

A perusal of order Annexure P/7 indicates that it contains two parts. Before noticing as to what it contains, another factor may also be noticed. It is not in dispute that the Managing Committee of the Bank was superseded by the Registrar of the Co-operative Societies in the exercise of powers conferred on him u/s 53 of the Act. That order is not on the file but it is not disputed that by that order, the respondent Bank''s affairs were to be looked into by the M. P. State Co-operative Land Development Bank, Bhopal (hereinafter referred to as the State Development Bank). It is in the light of the above factor, order Annexure P/7 has to be seen. As indicated above, this order Annexure P/7 contains two parts. By the first part, the State Development Bank was indicated as the authority who was to look after the affairs of the bank and manage the affairs of the respondent No. 3 Bank. Annexure P/7 further stipulates in the second part of the order that Shri S. R. Sahu, Assistant Manager of the Bank would look after the day-to-day affairs of the respondent No. 3 bank. He was appointed its Chief Executive Officer.

The argument thus raised is that vide order, Annexure P/7, the powers which vested in the Board or in the Managing Committee of respondent No. 3 never came to be conferred on the Chief Executive Officer so designated in Annexure P/7. A further argument has also been raised that even if it is presumed that some power is conferred on him even then it is contrary to law. For this reliance is being placed on a decision given by this Court in the case reported as Vijaykumar v. Sunderlal Mannalal, 1983 MPLJ 762. From this judgment, it is sought to be inferred that even if some power has been conferred on a particular officer, even then that officer or authority has no power to delegate his authority to any other person.

I am of the opinion that there is merit in the contention of the learned counsel for the petitioner. The powers which were to be exercised by the Managing Committee of respondent No. 3 came to be conferred on the State Development Bank at Bhopal. For managing the affairs of the bank the aforementioned State Development Bank was named as the institution who could exercise the powers. If this be the situation then whatever powers were to be exercised by the Board of respondent No. 3 Bank were to be exercised by the State Development Bank. For running day-to-day affairs of the Bank, power was given to the Chief Executive Officer. However, the power to appoint and dismiss which power was earlier exercised by the Respondent No. 3 Co-operative Land Development Bank, was to be exercised as the State Development Bank. It was this Bank which was nominated u/s 53(1)(c) of the aforementioned Act. As such, the conclusion is inescapable that Shri S. R. Sahu, Chief Executive Officer was not competent to pass order Annexure P/8. As such, the order of dismissal passed vis-a-vis the petitioner, copy whereof is Annexure P/8 and the appellate order Annexure P/12 are liable to be quashed and are hereby quashed. The respondents are directed to reinstate the petitioner. The authority now looking after the affairs of the Bank would however now go into the question as to whether the petitioner was entitled to back wages also. The petitioner would be at liberty to prove that he was not gainfully employed during the intervening period. In case it is found that the petitioner was not gainfully employed, then the authority would pass an order with respect to back wages also.

The respondents would also be at liberty to pass further order with regard to disciplinary matters in accordance with law.

This petition is disposed of accordingly.

Security, if paid, be refunded to the petitioner.